

June 6, 2016

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**Via Email: P65Public.Comments@oehha.ca.gov**

Monet Vela  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

Re: Office of Environmental Health Hazard Assessment's 15-Day Notice of Modification to Text of Proposed Rulemaking to Article 6 in Title 27 of the California Code of Regulations pursuant to the Safe Drinking Water and Toxic Enforcement Act dated May 20, 2016

Dear Ms. Vela:

This comment letter is submitted on behalf of Nutraceutical Corporation ("Nutraceutical") regarding the Office of Environmental Health Hazard Assessment's ("OEHHA") 15-Day Notice of Modification to Text of Proposed Rulemaking to Article 6 in Title 27 of the California Code of Regulations pursuant to the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65").

Nutraceutical seeks clarification with respect to two issues for Food Exposure Warnings. *See* Proposed § 25607.1. First, Nutraceutical requests that OEHHA clarify in the Final Statement of Reasons that the on-product short form warning is a safe harbor warning for foods and dietary supplements. *See* Proposed §§ 25602(a)(1)(4), 25603(b). The Initial Statement of Reasons ("ISOR") in its discussion of Food Exposure Warnings states that "all methods of transmitting the warning for other consumer products under Section 25602 are equally available to businesses that manufacture or sell foods." ISOR, p. 34. The short form warning is set forth in Proposed Section 25602(a)(4). The ISOR further explains that "[s]ubsection (b) follows the safe harbor content requirements for on-product warnings but additionally requires that the warning be set off from other surrounding information by enclosing it in a box to ensure that the warning is

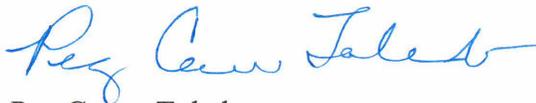
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likely to be seen and understood prior to exposure.” *Id.* Yet, the language of Proposed Section 25607.1 could be read to preclude the use of on-product short form warnings because it appears to only permit the warning language set forth in Proposed Section 25607.2, which does not include the short form warning language.

Second, Nutraceutical requests that the Final Statement of Reasons clarify that the Proposition 65 warning can be put inside the same box as other caution or warning statements on dietary supplements and foods. The language of Proposed Section 25607.1(b) is ambiguous regarding whether other warning statements could be inside the box with the Proposition 65 warning. In addition, the Final Statement of Reasons should make clear that the warning is a safe harbor warning if a company uses the phrase “California Residents Only” or “For California Residents” or “For California Residents Only” either inside the box or before the box to indicate that the warning is only intended for California consumers. This language has been approved for Proposition 65 warnings in numerous consent judgments involving dietary supplements.

Thank you for your consideration of our comments.

Very truly yours,



Peg Carew Toledo